

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GREGORY L. JACKSON,

Petitioner,

v.

9:03-CV-545

DANIEL SENKOWSKI, Superintendent; and
ELIOT SPITZER,

Respondents.

APPEARANCES:

OF COUNSEL:

GREGORY L. JACKSON
Plaintiff Pro Se
No. 00-B-0720
Franklin Correctional Facility
62 Bare Hill Road
Post Office Box 10
Malone, New York 12953

HON. ANDREW CUOMO
Attorney General of the State of New York
Attorneys for Respondents
The Capitol
Albany, New York 12224

ASHLYN H. DANNELLY, ESQ.
LUKE MARTLAND, ESQ.
Assistant Attorneys General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Petitioner Gregory L. Jackson ("Jackson") brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By a Report-Recommendation and Order dated January 3, 2007, the Honorable David R. Homer, United States Magistrate Judge, recommended that the petition for a writ of habeas corpus be denied. Jackson has filed timely objections.

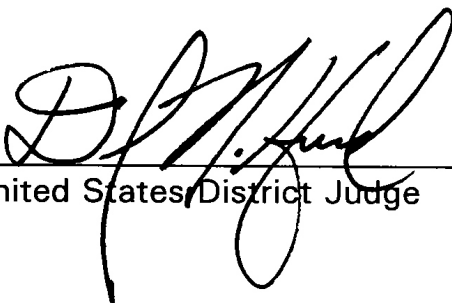
In the petition, Jackson argues, among other things, that the prosecution committed a Brady¹ violation when it withheld a videotape of a police interview with Larry Harden, his half-brother and former roommate. In the Report-Recommendation and Order, Magistrate Judge Homer found that Jackson “failed to demonstrate how Harden’s videotape would have led to a different result, instead stating in conclusory terms that the videotape ‘likely’ contained exculpatory evidence.” (Report-Recommendation and Order, No. 03-CV-545 (January 3, 2007) (Homer, M.J.).) While Magistrate Judge Homer was correct in his assessment of Jackson’s Brady argument, the Harden videotape was obtained and viewed in order to be certain that it did not constitute Brady material. It can now be said with certainty that the Harden videotape does not constitute Brady material.

Therefore, based upon a de novo determination of the Report-Recommendation and Order, including the other portions to which Jackson has objected, the Report-Recommendation and Order is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 Cases.

Accordingly, it is

ORDERED that the petition is DENIED and DISMISSED in its entirety.

IT IS SO ORDERED.


United States District Judge

Dated: July 31, 2007
Utica, New York.

¹ Brady v. Maryland, 373 U.S. 83, 85-87 (1963).